

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 DANIEL FREDERICK KRONE,

12 Petitioner,

13 vs.

14
15 T.L. GONZALEZ, Warden *et al.*,

16 Respondents.
17

Case No. 11cv1047-DMS (WMC)

**ORDER ADOPTING REPORT
AND RECOMMENDATION,
DISMISSING PETITION, AND
DENYING CERTIFICATE OF
APPEALABILITY**

18 Petitioner Daniel Frederick Krone, a state prisoner proceeding *pro se*, filed a petition for writ
19 of habeas corpus under 28 U.S.C. Section 2254 challenging his conviction and sentence for assault
20 and two counts of second degree murder. The petition was referred to United States Magistrate Judge
21 William McCurine, Jr. for a report and recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B)
22 and Civil Local Rule 72.1(d). Respondents filed a motion to dismiss based on the statute of
23 limitations. On January 19, 2012, the Magistrate Judge issued a Report and Recommendation,
24 recommending to grant Respondents' motion and dismiss the petition as time barred.

25 Petitioner timely objected to the Report and Recommendation. Respondents did not file a
26 response. In reviewing a magistrate judge's report and recommendation, the district court "shall make
27 a *de novo* determination of those portions of the report . . . to which objection is made," and "may
28

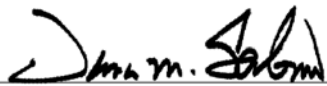
1 accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate
2 judge." 28 U.S.C. § 636(b)(1).

3 Upon *de novo* review of the Report and Recommendation and Petitioner's objections, the
4 objections are overruled. Even if Petitioner is given the benefit of equitable tolling, the petition was
5 filed more than nine years after the expiration of the statute of limitations. (*See* Report and
6 Recommendation at 4-5.) To the extent Petitioner argues Respondents' motion should be denied
7 based on his actual innocence, an issue not addressed in the Report and Recommendation, his
8 conclusory assertions do not meet the standard set forth in *Lee v. Lampert*, 653 F.3d 929 (9th Cir.
9 2011) (*en banc*), and *Schlup v. Delo*, 513 U.S. 298 (1995).

10 Accordingly, Petitioner's objections are **OVERRULED** and the Report and Recommendation
11 is **ADOPTED**. Respondents' motion to dismiss is **GRANTED**. The petition is **DISMISSED** as time
12 barred. Certificate of appealability is **DENIED**.

13 **IT IS SO ORDERED.**

14
15 DATED: February 23, 2012

16 
17 _____
18 HON. DANA M. SABRAW
19 United States District Judge
20
21
22
23
24
25
26
27
28